

**North Shore Weeklies, Inc. and Boston Local 600M,  
Graphic Communications International Union,  
AFL-CIO, Petitioner. Case 1-RC-20049**

July 14, 1995

**DECISION ON REVIEW**

BY MEMBERS STEPHENS, BROWNING, AND  
TRUESDALE

On February 14, 1994, the Regional Director for Region 1 issued a Decision and Direction of Election in the above-entitled proceeding, in which she found that the petitioned-for unit of production and maintenance employees employed at the Employer's newspaper publishing and commercial printing facility in Ipswich, Massachusetts, was an appropriate unit for collective bargaining, with the addition of the Employer's five couriers; that the Employer's three press supervisors were not statutory supervisors within the meaning of Section 2(11) of the Act; and that the best resolution of the status of the Employer's camera department manager and mailroom supervisor was through use of the Board's challenge procedure.

Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Employer filed a timely request for review of the Regional Director's decision, asserting that the Regional Director erred by failing to broaden the petitioned-for unit to include the circulation department employees,<sup>1</sup> and by failing to find that its three press supervisors, camera room manager, and mailroom supervisor were statutory supervisors. The election was conducted as scheduled on February 24-25, 1994, and the ballots were impounded. By Order dated March 16, 1994, the Board granted the Employer's request for review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case, including the Petitioner's brief on review, and has decided, for the reasons set forth by the Regional Director<sup>2</sup> and the additional reasons set forth below, to affirm the Regional Director's finding that the Employer's three press supervisors are not statutory supervisors.<sup>3</sup> The Board agrees with the Regional Director's determination that the instant press supervisors are distinguishable from the press operators found to be su-

pervisors in *McClatchy Newspapers*, 307 NLRB 773 (1992), relied on by the Employer.

The facts are fully set forth by the Regional Director. Briefly stated, the Employer publishes newspapers and performs commercial printing. The Employer's presses are operated on three shifts. Each shift normally consists of a crew of five (which may be increased to seven for large runs), including a press supervisor, a pressman, a senior assistant pressman, an assistant pressman, and a catcher. The press supervisors give work assignments to crewmembers from a scheduled work list prepared by management and are responsible for directing the work of the press crews.

We agree with the Regional Director that the record does not establish that such assignment or direction is based on anything other than experience and knowledge of the craft skills necessary to operate the presses. See *Somerset Welding & Steel*, 291 NLRB 913, 914 (1988). Unlike the undisputed evidence in *McClatchy*, there is no showing here that the press supervisors are required to use independent judgment either in making assignments or in directing the work of their respective crews. Indeed, as the Regional Director noted, the record does not reveal the press supervisors' particular acts and judgments that make up their direction of work. Moreover, the record fails to support a finding that the press supervisors possess or exercise any other of the primary indicia necessary to a finding of supervisory status within the meaning of Section 2(11).<sup>4</sup> Additionally, in *McClatchy*, the Board relied on secondary criteria, including the press operators' pay differential, eligibility for substantial bonuses based on waste reduction efficiency, attendance at management meetings and training sessions, and access to supervisory offices, as indicating that the press operators were statutory supervisors. The press supervisors in the present case possess no such indicia of supervisory status.

Thus, we find that the Employer has not met its burden of proving that its press supervisors are statutory supervisors within the meaning of Section 2(11) of the Act.<sup>5</sup> Rather, in agreement with the Regional Director,

<sup>4</sup>For example, as the Regional Director points out, although the press supervisors appear to have significant input into the preparation of employee evaluations, it is clear that those evaluations currently have no effect on job status or wage increase determinations. *Northcrest Nursing Home*, 313 NLRB 491, 498 (1993). In addition, the press supervisors have no role in interviewing job applicants, and apparently do not participate in the decision to hire applicants not personally known to them. *Poor Richard's Pub*, 220 NLRB 1363, 1364 fn. 4 (1975). Similarly, evidence of their role in effectively recommending the discharge of two employees was inconclusive, as the record shows that the employees were discharged only after repeated urgings by the press supervisors, leading to an inference that the ultimate decision was made after independent investigation or review of management. *Northcrest*, supra at 497; *Phelps Community Medical Center*, 295 NLRB 486, 491 (1989).

<sup>5</sup>*Tucson Gas & Electric Co.*, 241 NLRB 181 (1979).

<sup>1</sup>There was no request for review of the Regional Director's inclusion of the couriers.

<sup>2</sup>The relevant portions of the Regional Director's Decision are attached as an appendix.

<sup>3</sup>With respect to the placement of the circulation department employees and the supervisory status of the camera department manager and the mailroom supervisor, the Board concludes that it would better effectuate the purposes of the Act to resolve these issues through use of the Board's challenge procedure.

the Board finds that they, at most, are experienced leadmen who operate within parameters that have been defined by management. See *Quadrex Environmental Co.*, 308 NLRB 101 (1992); *Sears, Roebuck & Co.*, 292 NLRB 753 (1989).

Accordingly, for the above reasons, and those set forth in the Regional Director's Decision and Direction of Election, we conclude that the press supervisors are not statutory supervisors. The case is remanded to the Regional Director to open and count the ballots cast in the election held on February 24-25, 1994, and to issue an appropriate certification.

#### APPENDIX

#### DECISION AND DIRECTION OF ELECTION

##### THE SUPERVISORY ISSUES

The Employer contends that George Wallick, Stephen Cappos, Michael Cappos . . . are supervisors within the meaning of Section 2(11) of the Act and hence should be excluded from the unit. The Petitioner claims that these individuals are at best leadpersons and, accordingly, should be included in the unit.

The Employer's presses are operated on three shifts. Each shift normally consist of a crew of five persons, but may be increased to seven for large runs. Each crew is headed by one of the three press supervisors, George Wallick, Stephen Cappos, or Michael Cappos.

In September 1992, Wallick's job title was changed from press supervisor to senior press supervisor. Wallick, who was called a witness by the Petitioner, testified without contradiction that the only functional change which accompanied the change in his title was that he was supposed to decide upon and leave written work directions for the other two shifts concerning the maintenance of the presses, but that he discontinued leaving such directions after several weeks because they were consistently countermanded by his superior, Printing Manager Mike Fournier. Since the parties agree that Wallick and the two Cappos are currently vested with substantially the same authority, I shall hereafter not distinguish between the senior press supervisor and the two press supervisors, and evidence concerning the authority of any of them I have considered as equally applicable to all of them.<sup>4</sup>

In addition to the press supervisor, each five-person crew consists of a pressmen, a senior assistant pressmen, an assistant pressmen, and a catcher. The parties agree that the press supervisors have authority to make work assignments as needed among the press crews and that in fact they are the only ones who exercise this authority. In his testimony, Wallick depicted this authority as, for the most part, unexercised because the press crews consist of experienced employees who know what they are supposed to do. The record contains little specific evidence upon which to base a determination whether the making of such work assignments requires the use of independent judgment. For example, Production Director Larry Ellsworth testified that employees vary in their ability to distinguish and select proper ink den-

sities, but he failed to explain how a press supervisor's determination of which employee is best qualified to be assigned responsibility for ink density might require any form of judgment other than his own fully developed craft skill in discerning and adjusting ink densities. The Employer considers former Press Supervisor Paul Curtis Ramsdell's testimony that on one occasion he separated two catchers who spent too much time talking when they worked next to each other as providing a typical illustration of the type of work assignment judgment made by the press supervisors.

The press supervisors are also responsible for directing the work of the press crews, but the record does not reveal the particular acts and judgments of the press supervisors that make up their direction of the work.

In 1993, the Employer instituted a written evaluation procedure for all employees. Printing Manager Fournier consulted with the press supervisors in evaluating the pressroom employees and in most cases accepted the numerical ratings that they recommended for the various performance categories employed. Currently, these evaluations are not used for any particular purpose. The Employer asserts that if it decides to end its current wage freeze, which has been in effect of the last 3-1/2 years, it will give the written evaluations consideration in granting wage increases.

The press supervisors have and exercise the authority to counsel employees about problems with their work performance. The Employer has no formal disciplinary system and it is uncontested that the press supervisors have never been told that they have authority to issue oral warnings of a formal disciplinary character or written earnings (sic), nor have they ever exercised such authority.

With respect to hiring, Wallick testified that on four occasions he had successfully recommended for hire press employees whom he had known from his previous place of employment and that Michael Cappos had also successfully recommended that his brother Stephen Cappos be hired. The Employer did not challenge Wallick's further testimony that undisputed nonsupervisory employees have also successfully recommended the hire of individuals known to them personally. It is undisputed that the press supervisors have no role in the interviewing of applicants for hire and do not participate in any fashion in the decision to hire applicants not personally known to them.

The Employer asserted that a number of years ago it discharged a pressroom employee on Wallick's recommendation, but it did not deny Wallick's claim that the individual was only fired after he had repeatedly asked for his discharge. Similarly, Ramsdell testified that when he was a press supervisor he, in separate incidents, complained repeatedly about two employees whose work performance was grossly inadequate before the Employer discharged them.

Wallick acknowledged that he had authority to permit an employee to go home if the employee was sick and to order one off the premises for being under the influence of alcohol. Wallick testified that these were not situations in which he felt the Employer permitted him to exercise any other options.

The Employer did not contradict Wallick's assertion that he could only deny a vacation request himself if it failed to comply with the Employer's established rule that only one member of a press crew may be on vacation at a time; and Ellsworth conceded that the printing manager had to approve

<sup>4</sup>In fact, most of the evidence on the status of the press supervisors presented at the hearing concerned Wallick.

all vacation requests and before doing so would examine the press supervisor to assure himself that granting the request would not impair efficiency.

In the fall of 1990, the Employer solicited Wallick's advice in fashioning a bonus plan to achieve a reduction in the amount of waste newsprint in the pressroom. Wallick suggested that any bonus be shared among all three shifts rather than awarded to a particular shift, since in his view any reduction in waste could only be attributed the combined efforts of all three shifts given the integrated nature of the operations in the pressroom. The Employer accepted this suggestion. In the fall of 1993, the Employer in similar circumstances accepted Wallick's recommendation, this time to eliminate a portion of a proposed bonus plan for the pressroom.

It is well settled that an employee cannot be transformed into a supervisor by the vesting of a title and the theoretical power to perform one or more of the functions enumerated in Section 2(11) of the Act. *Magnolia Manor Nursing Home*, 260 NLRB 377, 385 fn. 29 (1982). To qualify as a supervisor, it is not necessary that an individual possess all of the powers specified in the Act. Rather, possession of any one of them is sufficient to confer supervisory status. *Somerset Welding & Steel*, 291 NLRB 913 (1988); *Chicago Metallic Corp.*, 273 NLRB 1677, 1689 (1985). Consistent with the statutory language and the legislative intent, however, it is well recognized that the disjunctive listing of supervisory indicia in Section 2(11) does not alter the requirement that a supervisor must exercise independent judgment in performing the enumerated functions. Thus the exercise of supervisory authority in a merely routine, clerical, perfunctory, or sporadic manner does not elevate an employee into the supervisory ranks, the test of which must be the significance of the judgment and directions. *Opelika Foundry*, 281 NLRB 897, 899 (1986); *Hydro Conduit Corp.*, 254 NLRB 433 (1981). Additionally, the existence of independent judgment alone will not suffice, for the decisive question is whether the employee has been found to possess the authority to use independent judgment with respect to the exercise of one or more of the specific authorities listed in the Act. *Advanced Mining Group*, 260 NLRB 486, 506-507 (1982). Moreover, in connection with the authority to recommend actions, Section 2(11) of the Act requires that the recommendations must be effective. *Tucson Gas & Electric Co.*, 241 NLRB 181, 182 (1979).

On review of the record herein, I find that the press supervisors are at most leadmen and not supervisors within the meaning of Section 2(11) of the Act.

While the press supervisors control the work assignments of their crews, there is no showing that this requires the use of independent judgment. The few specific illustrations of this function which appear in record, such as the selection of the employee best capable of managing the ink densities or the separating of two talkative employees, indicate no more than that the press supervisors need only exercise routine judgment based on experience or ordinary craft skills. Unlike the press operators in *McClatchy Newspapers*, 307 NLRB 773, 779 (1992), cited by the Employer in its posthearing brief, the record here is devoid of any indication that independent judgment is required in the direction of work by the press supervisors. Moreover, unlike *McClatchy*

*Newspapers*, there is no evidence that assignments of work here result in premium pay to employees.<sup>5</sup>

While the press supervisors appear to have significant input in the preparation of employee evaluations, the evaluations themselves currently have no effect on job status and their possible future influence on wage increase determinations is wholly speculative on this record. In these circumstances, the press supervisors' role with respect to evaluations does not indicate supervisory status. *Passavant Health Center*, 284 NLRB 887, 891 (1987).

Similarly, the authority of the press supervisors to give oral counselings which carry no formal weight does not demonstrate the exercise of supervisory authority. *Tucson Gas & Electric Co.*, supra at 182. *Passavant Health Center*, supra at 889.

The press supervisors are not involved in the Employer's formal hiring process. They have successfully recommended the hire of employees known to them personally but in this they are no different from other, admittedly statutory employees who have also secured employment for persons known only to them. Accordingly, no finding of supervisory status may be based on this circumstance. *Poor Richard's Pub*, 220 NLRB 1362, 1364 fn. 4 (1975).

The two instances described in the record in which press supervisors recommended the discharge of an employee may not be taken to support an inference of supervisory authority because the employees in question were only discharged after repeated urgings by the press supervisors, which makes it as likely that the Employer's ultimate decision to discharge in each case was effectively brought about by considerations independent of the press supervisor's recommendation as is the contrary supposition. Where the evidence is thus inconclusive, the Board will not find that supervisory status has been established on the basis of such evidence. *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989).

The circumstances in which the press supervisors may permit or require employees to leave work are narrowly restricted and allow virtually no room for the exercise of independent judgment and, accordingly, do not indicate supervisory status.

Similarly, the press supervisors' power to deny vacation requests is limited to the single situation in which another crewmember is already scheduled to be on vacation. In all other cases, the immediate superior of the press supervisor appears to question the latter closely as to the advisability of granting the request, and in this manner makes an independent review of the request rather than simply deferring to the press supervisor's judgment. Accordingly, insofar as the press supervisors have authority to deny vacation requests, they do not use independent judgment; and, insofar as they recommend approval of vacation requests, these recommendations are not themselves effective.

The two occasions, occurring 3 years apart, in which the Employer modified its incentive plan for the press crews at Wallick's recommendation are isolated incidents insufficient to establish that the press supervisors have supervisory authority.

<sup>5</sup> The record evidence in *McClatchy Newspapers* to the effect that the press operators responsibly direct the work of unit employees and assign work to unit employees was undisputed, unlike the instant case.

Finally, although there may be times such as on weekends and at nights when the press supervisors have no direct superior on the premises, their superiors are always on call to

handle matters requiring independent judgment. *Waverly-Cedar Falls Health Care*, 297 NLRB 390, 393 (1989).